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NOTES ON THE RENT DIFFICULTIES IN LOWER BENGAL.

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NOTES

ON THE

RENT DIFFICULTIES

IN

LOWER BENGAL,

AND ON THE

PROPOSED AMENDMENT

OF

ACT X. OF 1859,

BY

R. T. LARMOUR.

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NOTES

ON THE

RENT DIFFICULTIES

IN

LOWER BENGAL.

THE following letter, from the Secretary to the Government of Bengal, to the Secretary of the Landholders' and Commercial Association, corroborates the statements I have repeatedly made to the authorities and others since 1860 as to the condition of this district, and shows that the rent difficulties are acknowledged to have reached a serious crisis :—

"FROM

"E. H. LUSHINGTON, ESQ.,

"*Secy. to the Govt. of Bengal,*

"TO

"W. F. FERGUSSON, ESQ,

"*Secy. of the Landholders'*

"*and Commercial Association.*

"*Dated Fort William, the 12th February* 1862.

"SIR,

"I AM directed to acknowledge the receipt of your "letter, dated the 7th instant, enquiring when the Special "Commissioners. promised by the Government of India to the "Association, for the purpose of inducing more punctual "payment of rents due to Planter Zemindars in the Indigo "Districts, will be appointed, and when the Commission "will set to work.

" 2. In reply I am desired to state that, since the promise " above referred to was made, the Collector of Nuddea and " the Commissioner of the Division have represented, that " under existing circumstances, the appointment of one or " more Commissioners having no authority to settle the " matters actually in dispute, would be useless and objec- " tionable, and have recommended the appointment of one or " more Special Commissioners having lawful authority in " those matters. The Government of India have been made " acquainted with the circumstances, and the objections and " proposals of the local Officers in relation thereto, and " orders have been requested thereon.

" 3. Since this reference to the Government of India has " been made, similar objections and proposals have been " received from the Officiating Collector of Jessore.

" 4. On the orders to be passed by the Government of " India on this reference, the character of the Commission " and the detailed instructions of the Commissioners will " depend

" 5. In regard to the measures meanwhile adopted to " assist the zemindars in the realization of their dues " beyond the establishment of the necessary numbers of " Courts, I am desired to refer the Association to my endorse- " ment No. 3183A, of the 28th December last, and to my " letter No. 336A, of this date, and also to the introduction " of a law imposing penal damages in cases of wilful and " unwarrantable refusal to pay rent justly due.

" I have the honor to be,

" SIR,

" Your most obedient servant,

" (Signed) E. H. LUSHINGTON,

" *Secy. to the Govt. of Bengal.*"

It is unnecessary here to enlarge on the causes which have produced the present disastrous state of things. They will be found in the records of the Bengal Government, whose officers, until very recently, have persistently ignored the existence of any combination amongst the ryots, or any general repudiation by them of their obligations to their landlords. But it is now, I believe, admitted by all, that, in the Districts of Nuddea and Jessore, there is an universal combination to refuse the payment of rents, and to force the landlords into Court to endeavor to recover their dues; and this conspiracy is rapidly extending throughout Bengal.

The Chiefs of this combination, generally designated "Committar Kortah," are usually men of small pecuniary means, and of bad and desperate character, who have taken up the trade of agitation, which they have found a profitable employment. There are four or five of them in each village who are collectively termed "Commits." They incite the ryots to withhold their rents, and persuade them, it is the wish of Government, that they should do so; they also levy from the ryots large contributions, under the pretence that they are necessary to enable the "Commits" to carry on the contest with their landlords. If a ryot refuses to join the combination, to contribute to its support, or seeks to return to his former amicable relations with his landlord, he is at once socially proscribed, and subjected to every species of annoyance and persecution by the ringleaders. In fact, a system of intimidation appears to have been established by these men, in order to compel the ryots to follow their dictation. It is well known that crimes, against both the person and property, are of frequent occurrence in this country, and the ringleaders resort to them freely in order to preserve and extend their power. Under these influences,

the ryots now almost universally refuse to pay their rents unless compelled to do so by suits in Court, and they are spending the money, which should have gone to their landlords in supporting these "Commits," and in litigation.

The existence of the Government depends on the revenue from the land payable by the zemindars, and regularity in these payments is secured by rules of the most rigorous character. The zemindar may struggle on for a time, and contrive to meet his liabilities to Government by contracting loans, or by drawing on other sources, as he has already, to a large extent, been obliged to do. But this must soon come to an end, and if the zemindar cannot collect his rents with punctuality, he has nothing before him but absolute ruin, and the loss of his property by the summary process of a Collector's sale. The European landholder, being almost invariably a putneedar, is even in a worse position than the zemindar, because the putneedar engages to pay his rent to the zemindar by monthly instalments, whereas the zemindar has to pay his rent to the Government every quarter.

In every civilized country, the rights of the landlord are considered of paramount importance, and every facility is afforded him for recovering his dues without being obliged to have recourse to a suit at law. Until the passing of Act X. of 1859, the landholders of Bengal had the power of summoning their tenants to their own offices or cutcherries for the purpose of paying their rents. This power was very seldom exercised by me, but the knowledge of its existence was sufficient to ensure something like regularity of payment of rent. Act X. of 1859 withdrew this power, and left landholders no means of recovering their rents, except by instituting suits against defaulting ryots in the Civil Courts.

The English law enables the landlord to recover his rent without legal process by distraining, or taking possession of and selling any moveable property on the premises in respect of which rent is in arrear, whether such moveable property belong to the tenant, or not, the tenant having his legal remedy against the landlord, if the latter claims more than is due to him, takes an excessive distress, or otherwise exceeds his power. The landholder in Lower Bengal possesses no such remedy.

It is true that, by Section 112 of Act X. of 1859, the landlord is entitled, in certain instances, to distrain, but Section 115 specially limits the power of distress to standing crops and crops gathered, but not stored, and continues, "But no "such crops or products other than the produce of the land "in respect of which an arrear of rent is due, or of land held "under the same engagement, and no grain or other produce, "after it has been stored by the cultivator, and no other "property whatsoever, shall be liable to distraint under this "Act."

The last exception renders the power of distress virtually inoperative, as it is well known that it would be next to impossible to levy an effectual distress on standing or unstored crops in a village in Lower Bengal. As soon as arrears have accrued, the ryot would prepare for the probable consequences of his indebtedness, and long before the landlord's bailiff could make his appearance, the crops would be removed. And each ryot's holding is divided into so many separate parcels, or small strips intersecting the lands of other ryots, that it would be impossible to trace or identify the produce of each holding; besides, it is only at certain seasons of the year that there are any standing or unstored crops on the ground.

The landlord in Bengal has therefore now in reality no means of recovering his rents, except by instituting a suit in a Civil Court against each tenant under Act X. of 1859, which, with great minuteness, prescribes the landlord's remedies, and lays down the only course of procedure which he may adopt. How utterly inefficient are these remedies, and how impracticable is this course of procedure, will be demonstrated in the following pages.

The several properties, belonging to the Bengal Indigo Company, and to the proprietors of the Lokenathpore Estates, all of which are under my charge, cover an area of upwards of 1,500 square miles. We have 34,885 ryots holding lands from us at yearly rents, and our total collections amount to upwards of Rupees 4,00,000 (£40,000). Our properties are divided into almost infinitesimal holdings. I may mention as an example, that a village paying an annual rent of Rupees 529 has 48 ryots, whose holdings are divided into 476 plots of land containing altogether 1,110 biggahs, or less than 400 acres, each plot being, on an average, about two-thirds of an acre. The plots of each ryot are scattered throughout the village, and interspersed with the plots in the occupation of other ryots. There are no enclosures, but merely small aisles or lines of earth a few inches high, to separate one plot from another, and which are so easily obliterated, that a couple of ploughings will remove all trace of them. It is therefore erroneous to lay down rules for our guidance, and to reason as if a ryot's holding was situated like a farm in England, *viz.*, all his land in one spot, in a ring fence, and with defined substantial enclosures, thus rendering the distraining or attachment of crops a matter of little difficulty.

Until the year 1860, our ryots paid their rents with regularity. When symptoms of a general repudiation of

rents appeared, I felt convinced that it would be in vain for me to contend, by suits in the Civil Courts, with an entire population, spread over estates four times larger than the county of Middlesex. I hoped that the Government would at once take steps to destroy the influence of the ringleaders, and to remove from the minds of the ryots the impression that they had the countenance of the authorities in the repudiation of their rent engagements. I therefore determined to wait patiently until the Government took some decisive action in the matter, (as I was certain they would, sooner or later, be compelled to do) instead of doing anything myself, which might irritate the ryots, or widen the breach that had arisen between them and their landlords. It was only when Mr. Montresor came into the district as Special Commissioner, (*but without any summary power,*) that, at his request, I for the first time, instituted suits against some of the defaulting Mulnath ryots.

In order to bring my observations within a moderate compass, I shall confine my illustrations to examples taken from the Mulnath property, which is under my own special management, and with every minute detail of which I am personally acquainted.

In the year 1861, I instituted suits against nearly 600 ryots on the Mulnath property, to recover rents due up to the Bengalee year 1267 (April 1861), amounting to upwards of Rs. 5,000. Of these suits only six were dismissed, and I expended Rs. 900, in excess of the costs recovered through the Court.

It would have been imagined that the example of last year would have been sufficient, and that none of the ryots, who had had decrees given against them for the rents due in 1267, would resist payment of rents due in 1268.

The example had no effect, and I have been obliged to institute new suits against all the ryots whom I sued last year, as well as against many others. Of course they had no defence, and I had only to put in the decrees given last year as evidence of the amounts of the subsequently accrued rents, and decrees have been given accordingly. But the *realization* of rent decrees is the point on which I always felt certain that the legal machinery would break down. To show that this has been the case, I submit the following statement of suits commenced against Mulnath ryots from August 1861 to 13th February 1862:—

No. of suits.	Amount of Claims.	Costs incurred.
626	Rs. 8,426	Rs. 2,100
No. of suits heard and decrees given.	**Amount of decrees.**	**No. of warrants issued under decrees.**
521	Rs. 7,387	291
Amounts ordered to be levied under the warrants.	**Realized.**	
Rs. 4,251	Rs. 2,105	

Total amount of claims in 626 suits, exclusive of costs, ...	8,426
Realized	2,105
Still unrealized ...	Rs 6,321

Only 291 warrants have been issued on decrees up to date, as the peons attached to the Courts of the Deputy Collectors were not sufficiently numerous to execute a larger number.)

It has been frequently asserted that the ryots, on decrees being obtained against them, would *immediately* come forward and pay the money. If this assertion had been correct, they would surely at once have paid the amounts of my decrees, instead of compelling me to issue warrants to enforce them.

It is not to be forgotten that in order to institute and carry on these suits, a large cash outlay is necessary.

The preliminary costs of a rent suit are as follows :—

Stamp	0	4
Summons	0	5
Deposit on issuing warrant, for subsistence of defendant, for 1 month,	3	12
For executing warrant	1	8
Rs.	5	13

The ordinary charge for serving a summons is Re. 1-8, but when summonses are directed to a number of ryots belonging to the same village, the charge is five annas.

Section 96 of Act X. of 1859 directs payment of diet money at the same rate per month "previously to the commencement of each succeeding month of the imprisonment, "in failure of which, the party confined, shall be discharged"

The above charges are irrespective of the fees paid to mookhtears, which are not now recoverable from the defendant. I see, however, that the proposed amendments of Act X. 1859 authorize the Collector to award fees for the services of any agent or mookhtear. But in addition to these charges, there are the heavy expenses of our amlah and witnesses in going to and from the Collector's Courts, and remaining there while the suits are pending, none of which expenses are recoverable from the defendants.

In *contested* suits, the difficulties which the European landholder has to encounter, are almost insuperable. It is unnecessary to tell any person, acquainted with proceedings in the Mofussil Courts, what those difficulties are.

In some of my recent rent suits against ryots holding leases from the Bengal Indigo Company, the defendants put in forged leases, purporting to have been granted by other parties at much earlier dates than those leases on which I was suing; and denied having ever received leases from the Bengal Indigo Company at all. In suits between themselves shortly afterwards, some of the same ryots actually put in, as their own evidence, the very leases from the Bengal Indigo Company, the existence of which they had before so strenuously denied in my suits!

When a gang of forgers was discovered near Mulnath in July last, drafts of leases or pottahs were found in the house of the principal forger, the evident copies of which, purporting to be originals, duly signed and sealed, had been previously put in by the defendants in my suits, and a decree given on them against me!

Many of my ryots on receiving leases from me, said they were unable to read or write, and instead of signing their names to the kaboolyuts or counterparts of the leases, only made their crosses or marks. The same men, when sued for rent, came forward in Court and signed their names with readiness!

Suppose all these preliminaries got over and decrees given, how are they to be enforced?

Execution may be issued against either the person or moveable property of the debtor.

The debtor may be ejected from his holding, or his lease cancelled.

If the rent be due in respect of an under-tenure, which is transferable by sale, an application may be made for the sale of such tenure.

If judgment cannot be satisfied by sale of debtor's moveable property, an application may be made for execution against any immoveable property belonging to him.

If execution be issued against the person of the debtor, in nine cases out of ten, he absconds, and cannot be found. If he *be* arrested and imprisoned, the creditor is obliged to pay for his maintenance during the time of his incarceration, which by Section 93 of Act X shall not exceed three calendar months, when the amount decreed does not exceed Rs. 50. There are few ryots who have not sons or other near relations residing with them, who are perfectly able to carry on the cultivation, and any other business of the defaulter, whilst the latter is spending three months comfortably in jail, at a cost to his landlord of Rs. 11-4, and the unfortunate landlord's claim is then considered as satisfied! For by Section 94:—"Any person once discharged from jail, shall not be "imprisoned a second time under the same judgment. And "if the amount due under the decree do not exceed Rs. 100, "the Collector may declare such discharged person absolved "from further liability under that decree."

If a warrant be issued against the moveable property of the debtor, it is next to impossible to execute it, because by Section 87 of Act X. "the property to be seized shall be pointed out "to the officer entrusted with the execution of the process by "the creditor or his agent.". This is impracticable at the present time, as no servant of ours dares to remain in the recusant villages, and with the present combination against us, we cannot obtain information as to the cattle, crops, or other property belonging to the defendants.

If the landlord eject the debtor or cancel his lease, (which *we* can have no difficulty in doing, as nearly all our defaulting ryots hold leases for five years, most of which have expired), what is the landlord to do with the land? Other ryots will not take leases, and the extent of country is so vast, that any attempt to cultivate it with our own servants is out of the question;

and it is equally impossible in such a case for the European landholder to prevent squatters from cultivating his lands without paying any rent at all.

It is well known to me that the ringleaders have been for some time urging the ryots to serve "estafas of their jummahs" (or notices of the surrender of their holdings), and thus throw all their lands on the hands of the zemindar and effectually ruin him. They point out to the ryots that, being all powerful from their numbers, decrees of Court for their ejectment from their homesteads cannot be executed, and that they will be able to retain possession of their houses and cultivate whatever lands they please to select.

Suppose the landlord obtains an order for the sale of the defendant's jummah should he hold a tenure transferable by sale or for the sale of any immoveable property which he may happen to possess, how is the description of such property, or the position or quantity of land to be ascertained? The landlord's servants as (I have before remarked) dare not enter the village, and the "Halsana," whose duty it is, and who alone possesses sufficient local knowledge to point out each ryot's holding, is invariably one of the Chiefs of the "Commits," or ringleaders of the combination.

Should the landlord, in the face of all these difficulties, succeed in attaching and offering for sale the ryot's jummah or other immoveable property, the dread of being proscribed by the combination will effectually deter any purchaser from coming forward.

The foregoing is a brief summary of the difficulties with which a landholder in Bengal has to contend in recovering his rents under the present law.

I will now make a few observations on the Bill, brought in on the 8th February instant, to amend Act X. of 1859.

I confidently affirm that any enactment of this nature will fail to meet the existing difficulty. When the landlord, as at present, is unable to recover his rents after having obtained decrees of Court, is it probable that he can recover penal damages in excess of his decrees ?

Section I.

Penal damages may be awarded when ryots wilfully withhold payment of rents.

I submit that it is leaving too much to the arbitrary discretion of the Deputy Collector to require him to pronounce when a ryot has wilfully, and without reasonable ground, contested a demand made on him for rents.

In my opinion, the only means of obtaining payment of rents in the present state of the country is through the action of the Police, and I have reason to believe this is the opinion of the Government also.

A peon from the Civil Court, sent to arrest a defendant, now seldom succeeds,—but the Police can always execute a warrant, if their Chief be a man of decision and independence. I propose therefore that, on a complaint being made by a landholder, a warrant should be issued to the Darogah, requiring him to procure the attendance of the ryot with the amount claimed. On the ryot appearing, if the landlord is able to substantiate his claim, the ryot should be ordered to pay forthwith, or be sent to jail, there to remain at his own expense or at that of the Government.

I am convinced that any less summary proceeding will be quite ineffectual.

The difficulty of a landholder (as I have before stated) is in getting his lands pointed out and identified. I would propose that the Government Officer be required to compel the attendance of the ryot, on the

Section II.

Measurement of lands by the Collector in certain cases.

landholder depositing the necessary expenses and applying for measurement. The assistance of the Police in this instance also should be made available.

Section III.

Measurements to be made by the Government standard pole.

The Government standard biggah, *viz.*, 80 haths of 18 inches, should be distinctly stated.

This Clause seems to me very objectionable. A ryot may resist his landlord's claim to the last moment, and having obliged him to commence a suit, the ryot may then pay the exact amount of his rent into Court, the landlord having no means of recovering the legal and other expenses incurred up to the time of such payment.

Section IV.

Defendant may pay into Court what he admits to be due without paying in any costs.

It is highly objectionable on another ground. It substitutes the Government, through their Deputy Collectors, for the landholder, and thus, instead of reconciling differences between him and his ryots, and bringing them into direct communication, it encourages the ryot to disregard his landlord altogether, who, if his rents be received by the Officers of Government, becomes a mere annuitant with no guarantee whatever for his income. As the Government, though proposing that their Deputy Collectors shall receive whatever the ryot may offer to pay, will not undertake to collect the landlord's rents, and to secure to him a certain rental.

I submit the Collector should also be authorized to award as costs the expense of attendance of witnesses, and any other charges which the plaintiff may have incurred in the suit.

Section V.

Fees to Agents or Mookhtears to be charged as costs of suit.

Section 112 of Act X. of 1859 provides that, in the case of sharers in a joint estate, the power of distraint shall only be exercised through a manager authorized to collect the rents of the *whole estate* on behalf of all the sharers.

Nearly all estates in this country are held by several proprietors in undivided shares, and too frequently they are at variance, and would never agree to appoint a joint manager. In estates so divided, it is the custom, for each proprietor to receive his share of the rent from the ryot in possession, giving a receipt for the same, and there seems to be no reason why he should not also be allowed to distrain for such separate share without obtaining the consent of the other joint proprietors.

I gather from Mr. Lushington's letter to Mr. Fergusson of the 12th instant, before referred to, that the Government of Bengal, in order to meet the present crisis, contemplates the appointment, as a temporary measure, of Special Commissioners armed with ample powers to enforce the payment of rents, but I submit that radical changes in the rent law are imperative and unavoidable. If the landholder have not some means of recovering his rents, without being forced to bring suits in the Civil Courts against each one of his defaulting ryots, numbering probably tens of thousands, no zemindar can exist, nor will the Government ultimately be able to collect the land revenue. Landed property in Bengal, instead of being a benefit to the possessor, will become an insupportable burthen, and capitalists of every class will seek other investments for their funds.

I contend that a landholder in Bengal should have the same power of distraining on his tenant's lands, and the same facilities for recovering his rents, as a landholder in Middlesex is afforded by the laws of England.

If, however, there be any reason why a landholder in Bengal should not be invested with this power of distress, (and I must confess that I know of none,) then I say that some other method should be devised by which he shall be able to recover his dues without being obliged to resort to a Court of law, and subjected to all the expense and harassing delay of separate suits against thousands of ryots. But, whilst giving the landholder a summary remedy, let the Government afford every protection and means of redress to the ryot. If the landholder demands, or recovers more than he is entitled to, let him be liable to pay 25 per cent., or any other penalty to the ryot in addition to the sum he has received in excess of his just demand.

It should be borne in mind that the experiment of leaving the zemindar to enforce his claims against his ryots in the Civil Courts was tried in the year 1793, and signally failed.

The Cornwallis Settlement reserved to the Government, on the default of the payment of the land revenue, the power to put up to sale as much of the land as was sufficient to discharge the arrears. "The Government," says Mr. Mill (vol. v., p. 518) "had established Courts of law, and appointed for them a list "of forms through which it required much time to pass. "In "their own case, however, it would, they perceived, be highly "desirable to obtain speedy justice, and therefore to be exempt "from technical forms. To what expedient then had they "recourse? To the abolition of technical forms? No. They "made a particular exception of their own case. They enacted "that in all suits for rent or revenue, the Courts should proceed "by summary process, nay, further, that in such suits the "proceedings should be exempted from those fees and expenses "to which other candidates for justice were to submit. On "what conceivable principle was speedy and inexpensive

"justice good for th Government, and not good for the "people?" The selling of the land immediately began, and proceeded with a rapid pace. In 1796, the land advertised for sale, comprehended a rent-roll of Rs. 28,70,061, or nearly one-tenth of the whole of Bengal, Behar, and Orissa in a single year. A cause which accelerated the ruin of the zemindars, was the delay they experienced in obtaining payments from the ryots. The Government reserved to themselves the summary process as against the zemindars, and left the zemindars to the tedious forms of the Courts, as against the ryots, and in two years the accumulation of undecided cases threatened to arrest the course of justice. In the District of Burdwan alone, *the suits pending before the Judge, exceeded thirty thousand.* The Collector of Burdwan, on the 9th January 1794, submitted to the Board of Revenue the complaint of the Rajah who, he stated, "seems "to think it must have proceeded from an oversight rather "than from any just and avowed principle, that there should "have been established two modes of judicial process; the one "summary and efficient for the satisfaction of its own claims, the "other tardy and uncertain in regard to the satisfaction of the "claims due to its subjects; more especially where ability to "discharge the one demand necessarily depends on the other "demand being previously realised"—(*Id.* 520.) Mr. Mill, observing on the state of the law before 1799, says:—"The "zemindar had it in his power to pillage the ryot, but the "ryot had it in his power to distress the zemindar. He "might force the zemindar to have recourse to law for procur- "ing payment of his rent, and the delay and expense of the "Courts were sufficient to accomplish his ruin. It is the "habit of the people of India to pay nothing until they are "compelled. A knowledge that they might always ward off "the payment to a considerable distance, by waiting for

" prosecution, was a sufficient motive to a great proportion of " the ryots to pursue that unhappy course, which in the long " run was not less ruinous to themselves than to the zemin- " dars."—(*Id.* 526.)

The Regulation of 1799, was at length passed, giving the zemindars a summary process, together with the power of compelling the attendance of their tenants to adjust rents, and a power of attachment and sale. The law was followed by a diminution in the outstanding balances and by improvements in the sales—(*Id.* 531.) Upon the strength of the powers which this Act conferred, all investments in the purchase of zemindaries and zemindary rights were made, until the year 1859, and vast sums were expended in such purchases, both by natives and Europeans.

R. T. LARMOUR.

MULNATH,
18*th February* 1862.

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